

# Notice of Allowability

Application No.

10/765,996

Examiner

Rosalynd Keys

Applicant(s)

MAAS ET AL.

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to reply filed February 22, 2007.
2. ☒ The allowed claim(s) is/are 9-14, 21, 23 and 25-27 (now claims 1-11).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance             |
|  | 9. <input type="checkbox"/> Other _____   |

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Harris A. Pitlick on April 4, 2007.

The application has been amended as follows:

in the last line of claim 9 insert "%" after the number 10 and add a period after the word weight.

Change the status identifier of claim 14 to (Previously Presented).

### ***Response to Amendments & Arguments***

#### **Oath/Declaration**

The requirement for a supplemental oath or declaration is withdrawn.

#### **Specification**

2. The disclosure is objected to because of the following informalities: the specification contains typos, for example the word "by" on page 13, line 18 should be changed to "be".

Appropriate correction is required.

#### **Claim Rejections - 35 USC § 112**

3. Applicant's arguments, see page 7, line 4 to page 8, line 10, filed February 22, 2007, with respect to the rejection of claim 21 under 35 USC 112, first paragraph have been fully considered and are persuasive. The rejection of claim 21 has been withdrawn.

4. The rejection of claim 22 under 35 U.S.C. 112, first paragraph, is withdrawn since this claim has been cancelled.

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5. The rejection of claim 24 under 35 U.S.C. 112, second paragraph, is withdrawn since this claim has been cancelled.

Double Patenting

6. The provisional rejection of claims 9-14, 21, 23 and 25-27 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-23 and 25-27 of copending Application No. 10/503,213 (US 2005/0107628 A1), is withdrawn due to the filing of a terminal disclaimer.

**Terminal Disclaimer**

7. The terminal disclaimer filed on February 22, 2007 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of Application No. 10/503,213 has been reviewed and is accepted. The terminal disclaimer has been recorded.

**Allowable Subject Matter**


8. Claims 9-14, 21, 23 and 25-27 (now claims 1-11) are allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosalynn Keys whose telephone number is 571-272-0639. The examiner can normally be reached on M, W & F 5:30-7:30 am & 1-5 pm; T & Th 5:30 am-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Rosalyn Keys  
Primary Examiner  
Art Unit 1621

April 5, 2007